

**ABUSE OF THE USPTO'S TELEWORK PROGRAM: ENSURING OVERSIGHT,  
ACCOUNTABILITY, AND QUALITY**

**INTRODUCTION**

My testimony is based on more than 33 years' experience at the U.S. Patent and Trademark Office ("PTO") and my subsequent nine years in private practice as a patent attorney. I believe we should treat the recent allegations of patent examiners abusing the current telework program as an opportunity to evaluate and strengthen this valuable program to avoid future abuses and to make it as robust as possible. The "compact prosecution" patent examination system and the manner in which patent examiners' productivity is measured create the opportunity for patent examiners to abuse the system, whether purposely or inadvertently. In this statement, I will set forth constructive suggestions regarding strengthening the telework program and will argue that the compact prosecution and examiner count systems urgently need to be modernized. With such modification, I believe patent quality can be significantly improved and pendency significantly decreased.

**PERSONAL BACKGROUND**

I joined the then-Patent Office in September of 1972 fresh out of engineering school and achieved the rank of Primary Examiner in 1979. Prior to becoming a Primary Examiner, I was awarded a Master's Level Ranking in my art area. Subsequently, I achieved a Generalist Rating indicative of my mastery of examining patent applications in diverse art areas.

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<sup>1</sup> Mr. Smith is Of Counsel for Baker & Hostetler, LLP. The views presented herein are those of Mr. Smith and are not to be attributed to the firm or to the firm's or his clients.

I was appointed as an Administrative Patent Judge (“APJ”) on the now Patent Trial and Appeal Board. I served in that position until my retirement from the PTO in December 2005. Upon retirement, I transitioned to the private sector, first joining Clements Bernard, an IP boutique in Charlotte NC, and then Woodcock Washburn LLP, another IP boutique, which merged into Baker Hostetler, where I am now employed.

In the private sector, I have prosecuted many patent applications and interacted with many patent examiners. I keep in touch with many friends from my days at the PTO on issues that involve the patent examining system and patent examiners. I am also active in AIPLA and IPO and have served as Vice Chair of the IPO U.S. Patent Office Practice Committee since 2009. I give CLE presentations to various IP associations and bar groups around the country and interact with the attendees to find out how satisfied they are with current state of the patent examination system.

I lived in South Carolina my last year of service as an APJ and telecommuted to the PTO Alexandria Campus at my own expense. The telework plan at the time required me to be physically in my Alexandria office 16 hours a week. Subsequently, I have been a teleworker at each of the law firms for which I have worked. I believe my work and telework experience inside and outside the PTO provide me with a relevant background to testify regarding today’s issues.

### **HISTORIC PTO WORK SCHEDULES<sup>2</sup>**

Like most federal employees, patent examiners’ work schedule involves the two week, or bi-week, pay period. Each patent examiner is expected to work 80 hours each bi-week and fills in a time and attendance report each bi-week. When I joined the PTO in September 1972, patent examiners worked an 8.5 hour day from 8:30 am-5:00 pm, Monday-Friday with 40 hours

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<sup>2</sup> This and the following sections on compact prosecution, the patent examiners’ count system and supervisory review of patent examiners’ work product are meant to be a high level view to provide a background for the subsequent discussion of the issues at hand.

worked per each week of the bi-week. When paid overtime was authorized, patent examiners could work on Saturdays. There were no sign in sheets.

During the 1980's the PTO initiated "flex time," which allowed patent examiners to work alternative work schedules. Workday hours were expanded to 6:30 am-6:00 pm. Eventually, patent examiners could sign up for schedules that allowed them to work more than eight hours per day with the extra hours credited to a flex day(s) in the same bi-week. Sign in sheets were placed in the reception area of each Technology Center, and examiners were expected to sign in and out on an honor system.

Flex time turned into a telework program where examiners were authorized to work from home for some portion of the bi-week. As the PTO hired large numbers of patent examiners in the last decade, space in the Alexandria campus became limited. PTO management implemented a more robust telework program to relieve the strain on space. The program began as a hoteling program where patent examiners could work some hours at home but were required to be at the Alexandria headquarters for a defined number of hours. In time, the requirement to be at the Alexandria headquarters was removed and patent examiners were allowed to move to any location in the United States with no requirement to be at the Alexandria campus or any of the new regional offices for any period.

### **COMPACT PROSECUTION**

The U.S. patent examination system has been operating under the tenets of "compact prosecution" for over 40 years. Prior to the advent of compact prosecution, examiner productivity was measured by the number of office actions mailed each bi-week without regard to the substance of the underlying work product. An examiner could be "productive" by issuing office actions that kept the case moving in a non-substantive manner. That system measurably increased the pendency of patent applications.

Compact prosecution was introduced in the late 1960's-early 1970's. The gist of compact prosecution is that, after the first exchange of a rejection from examiner and response from applicant, if the case is not allowed, the second office action will normally be made "final." An applicant's response to a final rejection is not entered as a matter of right and is entirely within the examiner's discretion. Prior to the introduction of the Request for Continued Examination ("RCE")<sup>3</sup> program in 1999, an applicant's options upon receiving a final rejection were to file a notice of appeal, final abandonment of the application, or to resume prosecution by filing a continuation or divisional application with the subsequent abandonment of the first application. Each continuing or divisional application received a new application number and counted as a separate new application for statistical purposes including measuring productivity. The PTO's bookkeeping was streamlined so the agency could document pendency per application. Once the tenets of compact prosecution kicked in, the PTO could correctly proclaim that pendency per application had been reduced. However, missing from the PTO's analysis was an understanding that compact prosecution did not necessarily reduce the time it took for the patent examiner to resolve the patentability of the claims under review. Rather, the examination process was now spread over many individual cases of shorter duration instead of a single application that had a long pendency. This was the beginning of the patent examiner's duties being viewed as piece work instead of a continuous conversation with applicant to find patentable subject matter.

Compact prosecution did not change when RCEs came into inception in 1999. The second office action was still expected to be a final rejection, thus interrupting the flow of the case, despite the new program that allowed "continued prosecution." However, the PTO did change the patent examiner count system to take into account that the patent application

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<sup>3</sup> An applicant files an RCE simply by filing a request therefore with the appropriate fee in a patent application. In essence, applicant is paying to reopen prosecution, i.e., remove the finality of the previous rejection so that prosecution can be resumed in the same application.

actually was not abandoned when an RCE was filed, just that the RCE reopened prosecution in the same application. RCEs were initially docketed as amended cases, which meant the case had to be picked up for renewed consideration by the patent examiner within two months of filing.

### **THE PATENT EXAMINER COUNT SYSTEM**

With the advent of compact prosecution, productivity metrics were changed. Each examiner was assigned a “balanced disposal” time goal. Balanced disposals in a given time period were determined by adding the number of new patent applications initially examined on the merits by the examiner to the number of cases disposed (by way of an allowance or abandonment or the writing of an Examiner’s Answer in a case that was appealed) during the relevant time period and dividing the sum by 2. The time aspect of the goal is meant to represent the average amount of time the patent examiner is expected to spend from the time the case is first taken up for review to its final conclusion of allowance, abandonment or appeal.<sup>4</sup>

A patent examiner’s productivity for a bi-week is determined by the hours in the bi-week spent on examining activities divided by the number of balanced disposals credited to the patent examiner during the bi-week. Of course some applications are harder to understand and examine and patent examiners will spend examining time on applications for activities during the bi-week that do not result in a count. These vagaries are allegedly captured in the hours per balanced disposal metric.

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<sup>4</sup> The average time spent on an application metric has not proportionately increased with the increase in the complexity of many technologies and the additional duties patent examiners have been required to assume over the decades.

## **SUPERVISORY REVIEW OF THE QUALITY OF THE PATENT EXAMINERS' WORK PRODUCT<sup>5</sup>**

A primary examiner is authorized to issue each office action and allow patent claims solely on his or her signature. In the normal course of business, a primary examiner's work product is not significantly reviewed in real time. However, it may be reviewed in a delayed manner by way of an appeal to the PTAB or a patent applicant's petition to have an office action reviewed on procedural grounds. A primary examiner can work in isolation without input from peers or supervisors as to the quality of their work product for significant stretches of time.

A non-primary examiner must have each office action reviewed and signed by a primary examiner or supervisor. As the non-primary examiner progresses through the ranks, their work product is expected to improve and is subject to less supervisory review.

Each examiner's productivity is measured and reported on a bi-weekly, quarterly and fiscal year basis. However, a patent examiner may not produce office actions evenly over a bi-week or quarter. This can happen due to the difficulty of the cases drawn during that time period or a lack of effort on the part of the patent examiner during the early part of the bi-week or quarter. This unevenness can result in an "end loading" problem where non-primary examiners may hand in a large number of office actions for review and signature at the end of the bi-week or quarter. This gives rise to "Count Monday."<sup>6,7</sup>

As the pressure increased on patent examiners regarding meeting productivity goals each bi-week, the PTO and the patent examiners' union, Patent Office Professionals Association ("POPA"), agreed that supervisors would review office actions handed in by non-

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<sup>5</sup> This section discusses only the day to day manner in which a patent examiner's work product is reviewed and does not discuss the various in-house quality review programs the PTO has in place.

<sup>6</sup> A recent discussion of Count Monday appears at the POPA web site at <http://popa.org/2507/>.

<sup>7</sup> Primary examiners must also have their office actions in by the appointed time on Count Monday. Thus, those primary examiners who procrastinate and are also end loaders exacerbate the problems that the PTO systems have with processing office actions on Count Monday.

primary patent examiners in a bi-week by a specified time on the following Monday. Thus, if examiners turn in work late in a bi-week, a supervisor may have a large number of office actions to be review on Count Monday. Keep in mind that the supervisor's own performance rating depends largely on each assigned patent examiner meeting individual productivity quotas, there may be a built in bias for the supervisor to allow suspect work products to go forward.

Last year POPA cautioned examiners about "Work Credit [Count] abuse."<sup>8</sup> In my experience, and consistent with feedback I have received from practitioners over the last eight years, too many initial office actions are issued that are incomplete or lack credibility. An incomplete initial office action disrupts the prosecution timeframe because typically 1-2 RCEs will be necessary to put the case in the correct posture. Applicants have no meaningful way to obtain an independent review on the merits during the examination process. Poor quality initial examination has resulted in the large number of RCEs being filed and *ex parte* appeals pending at the PTAB.<sup>9</sup>

### **RCEs**

Compact prosecution could have, but did not, significantly change when RCEs came into being in 1999. However, the PTO changed the count system to recognize that the patent application was not actually abandoned; instead, the RCE reopened prosecution of the same application. The PTO and POPA agreed to modify the system and created a system where the case had to be picked up for renewed consideration by the patent examiners within two months of filing.

Director David Kappos came into office with a mandate to reduce the unexamined case backlog. In an agreement with POPA, the PTO changed the count system so that a first office

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<sup>8</sup> <http://popa.org/2165/>

<sup>9</sup> As of September 30, 2014, 25,506 *ex parte* appeals were pending at the PTAB, up from around 1,000 pending appeals circa December 2005.

action in an RCE received less than a full count credit. This was done to incentivize patent examiners to take unexamined new cases from the back log up for action instead of renewing examination in RCEs. The agreement also changed the manner in which RCEs are docketed to patent examiners. Instead of being docketed as amended cases which meant the patent examiner had to take it back up for action in two months, RCEs were docketed as special new cases which meant the patent examiners only had to take one up for action every 1-2 months.

The consequences of these changes were dramatic. The unexamined new case backlog decreased as intended, but the backlog of unexamined RCEs mushroomed, reaching over 111,000 pending RCEs in early 2013 with an attendant delay of patent examiners taking RCEs up for action, which in some cases stretched into 2-3 years. In response to the criticism received for causing the large backlog of RCEs and the delay in taking them back up for action, the PTO recently re-incentivized patent examiners to take up for action more RCEs than their performance plan would require. As a result, the backlog of RCEs has dropped to just over 40,000 as of September 2014.<sup>10</sup>

## DISCUSSION

The vast majority of patent examiners I knew and worked with were honest with their timekeeping and I believe that to be the case today. However, if a patent examiner wants to work the system, the compact prosecution and patent examiner count systems are rife with opportunities for them to take advantage. When you measure an employee's productivity by a quota system, you are telling too many employees how *little* work they have to do. If someone is expected to produce 12 widgets in an 80 hour bi-week and through the luck of the draw they

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<sup>10</sup> The PTO has a finite capacity under the present management systems to be "productive." One need only to ascertain the total number of counts the present Examining Corps, currently over 8,000 patent examiners, is expected to produce each year. Picture that number as an inflated balloon. When one redirects the patent examiners' work efforts to decrease one aspect of the balloon, the balloon will necessarily bulge outwards in a different area as the total volume of the balloon was not expanded.



produce the twelve widgets in the first 60 hours of the bi-week, what are they expected to do with the other 20 hours of examining time? Some patent examiners work ahead knowing that the work to do in the next bi-week may be harder. Some patent examiners struggle to make their productivity quota and put in extra, off the books hours, in order to make their quota numbers. Others will work to the quota and carefully tailor their productivity and counts to match the expected hours worked on examining activities that bi-week to meet their assigned quota regardless of whether they could have been more productive. Others unfortunately believe that they accomplished what they are paid to do and can, in essence, take the rest of the time off.

These behaviors existed throughout my career at the PTO regardless of what work schedule was in place. In the rigid 8:30-5:00 regime, examiners who wanted to abuse the system “disappeared” during work hours to do errands and other non-work activities. Some even ran personal businesses from the office during the day. Some examiners would sign in for overtime on Saturday, then, take in a matinee. It was easier for patent examiners who wanted to abuse the system to do so during the flex time regime as they were not necessarily expected to be physically present.

Among the most egregious abuse of the system that I am aware of occurred after I retired and involved a patent examiner that accepted and began employment with a local law firm while continuing his employment with the PTO. As understood, he would simply “sign in” at the PTO and disappear to work at the law firm. This dual employment went on for a significant time until the law firm became aware of the fact that its “new employee” was in fact still employed at the PTO as a patent examiner. It is telling that the law firm discovered the fraud, not the PTO.

Throughout my career at the PTO, supervisors tended to ignore time and attendance issues involving high count producers. Those patent examiners understood that, if they sufficiently exceeded their production quota, the boss would not be looking for them during the day, nor, typically reviewing the quality of their work product closely.<sup>11</sup>

I am not familiar with the particulars of the current controversy. However, in my view the solution is not to dismantle the current PTO telework program but, to modernize compact prosecution and the patent examiner count systems to allow for more efficient monitoring and management of the workforce, thus minimizing the opportunity for those who want to cheat the system to do so.

The first significant change I recommend is to do away with the current expectation that examiners are doing a good job simply because they are making their numbers. This expectation reduces the job of a patent examiner to a piece work, assembly line, position where they are paid to simply get a case to a final rejection so they can force applicant to file a RCE to get the second count and pick up the next case to get yet another count quickly. In essence, anyone can make their numbers if they do not care how well the work is done.

In announcing the current Department of Commerce Inspector General investigation to the patent examiners, POPA stated: “[w]hile we know that no wide-spread systemic telework and time abuse problems exist at the USPTO (our performance metrics for 2014 show us to be a very high-producing agency)....”<sup>12</sup> It is this attitude – that if we are making our numbers we are doing a good job--that needs to change. How does one “know” that there is no wide-spread abuse simply by looking at the counts? Working to a number should not be the goal for a position as complex and difficult as being a patent examiner. Making a patentability

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<sup>11</sup> There was a saying during my tenure at the PTO that a patent examiner never got fired for doing bad quality work, as long as they did a lot of it.

<sup>12</sup> <http://popa.org/2526/>

determination for a pending patent claim requires a unique blend of legal and technical skills that cannot be reduced to a number. The current management systems needs to change to ones where bringing each case to a successful conclusion, efficiently and at the lowest cost possible, is the goal and appropriately incentivized

The second significant change I recommend is to modernize compact prosecution to eliminate final rejections and the attendant “after final” practice that disrupts the course of a complete examination. The current system, in which issuing of final rejections to achieve quick counts that accrue when an applicant files a RCE, creates artificial stops in the patent examination system. Applicants cannot have an additional amendment/evidence entered into the record after a final rejection is issued as a matter of right. It is solely within the discretion of the patent examiner.

A significant accomplishment of Director Kappos’ administration was to emphasize applicant-patent examiner interviews. Interviews have long been a staple of patent prosecution and generally advance prosecution because the direct exchange of ideas can be more productive than trading paper. Examiners were authorized non-examining time<sup>13</sup> to prepare for and conduct interviews, and the interview program has become more robust. As a consequence of the teleworking program, many teleworking patent examiners are located such that an in-person applicant-patent examiner interview is impossible. History shows that the most productive interviews are held in-person, so the participants can exchange papers, mark up documents and have a frank conversation in real time. While the PTO is implementing software for interactive web interviews, the fact remains that actual face time is important in moving cases forward in a positive direction. The telework program frustrates in-person interviews as there is no requirement for examiners to physically be at any PTO facility to participate in such an interview.

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<sup>13</sup> Non-examining time can be simply seen as time in which a patent examiner is off the production clock.

It is common for an applicant to only fully understand a patent examiner's position once it is explained in a final or subsequent rejection. It is also common for an applicant-patent examiner interview to occur after the issuance of a final rejection where great progress can be reached and perhaps a tentative agreement is reached that additional claim amendments/evidence are needed to place the case in condition for allowance. The current system means that applicant will spend the resources to prepare an after final submission, knowing that in the vast majority of cases the patent examiner will not use their discretion to enter the submission into the record, thus necessitating the filing of an RCE.<sup>14</sup> Patent examiners do not receive a count for the time spent in considering an after final submission.

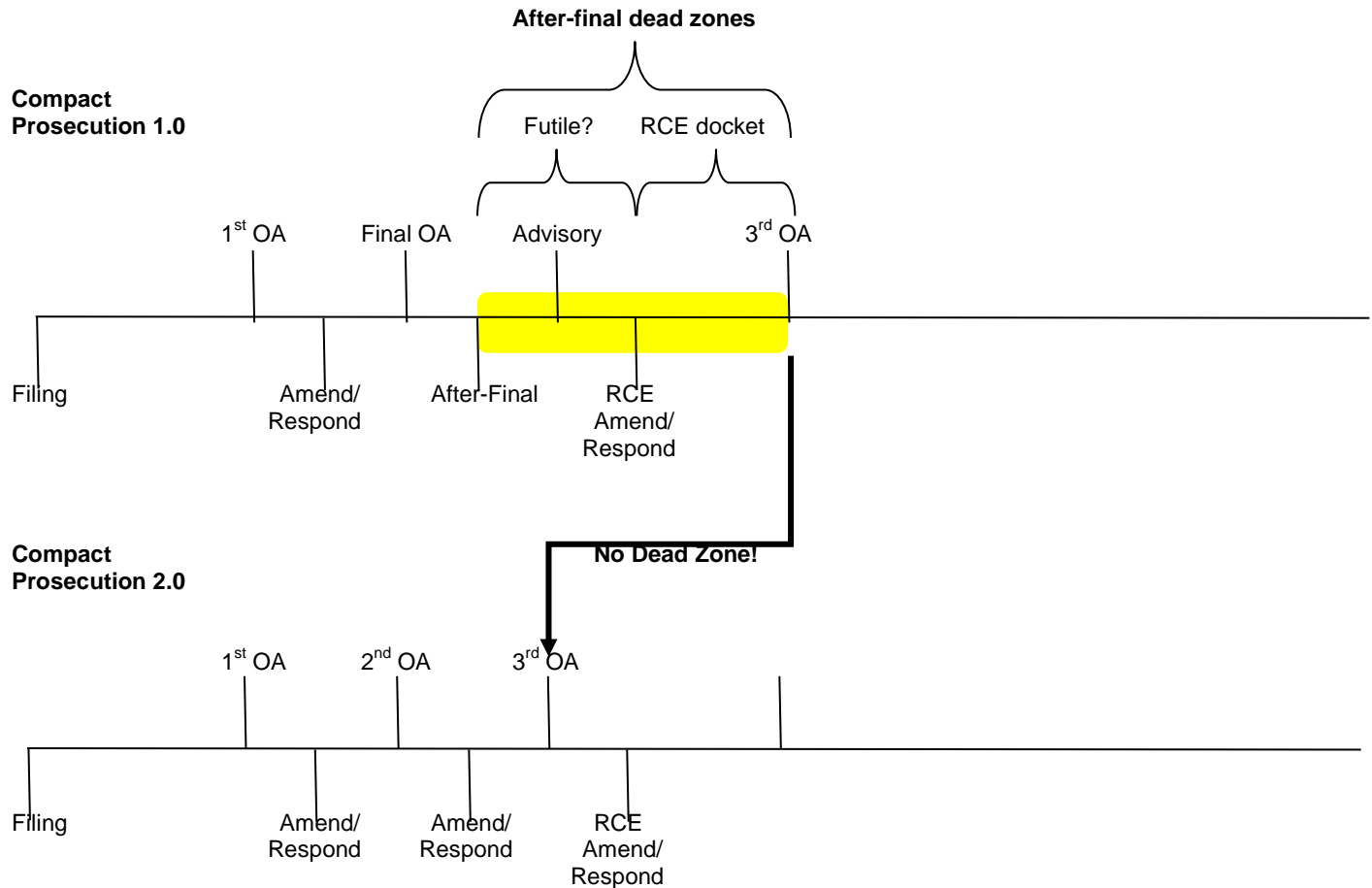
Meaningless after final submissions wastes the applicant's resources as well as the PTO's because examiners must take time to consider the submission and issue the paper, that in a significant number of cases, informs the applicant that the submission will not be entered and that an RCE must be filed for the patent examiner to consider the submission on the merits. The artificial "dead zones" the present system creates where no meaningful activity is ongoing in an application is illustrated in a paper I co-authored<sup>15</sup> as follows:

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<sup>14</sup> The PTO has begun a pilot program to incentivize patent examiners to consider more after final submissions by giving the patent examiners more time to do so.

[http://www.uspto.gov/patents/init\\_events/afcp.jsp](http://www.uspto.gov/patents/init_events/afcp.jsp). It should be noted that this pilot program is also discretionary with the patent examiner as instituting it as a mandatory program would require management negotiating with POPA.

<sup>15</sup> Smith *et al.*, "IN ORDER TO FORM A MORE PERFECT PATENT EXAMINATION SYSTEM—IT IS TIME TO UPDATE COMPACT PROSECUTION TO COMPACT PROSECUTION 2.0" available at <http://www.ipo.org/index.php/publications/member-articles-journal/member-article-journal-patent-section/>. Copy attached as Exhibit A. AIPLA and IPO each recently urged the PTO to modernize compact prosecution in their recent comments submitted in response to the PTO's "Request for Comments on Optimum First Action and Total Patent Pendency," Federal Register, Vol. 79, No. 131, July 9, 2014, pp. 38854-55. AIPLA's submitted comments are attached as Exhibit B and IPO's submitted comments are attached as Exhibit C.



These two dead zones typically result in an initially examined application sitting idle for 2.5-19.5 months.

Modernizing compact prosecution by eliminating final rejections and after final submissions, results in patent applications being before the patent examiner in a more continuous manner. The time a patent application spends in a dead zone is wasted and contributes to longer overall pendency. Some applications go through more than one RCE, subject to being placed a dead zone with each subsequent final rejection.

Eliminating final rejections and the attendant after final practice will breathe life into the RCE program. Each application would receive “continuous” examination with no dead zones. As explained in Exhibit A, this modernization could easily be implemented because the PTO can now set its own fees. Some would argue that the RCE fee will increase if prosecution is not brought to an early conclusion. However, eliminating dead zones will improve the overall pendency of a patent application by keeping it in active prosecution at all times. Patent quality

also should be expected to increase since the applicant and patent examiner would be continually engaged in a conversation to find patentable subject.

A key to improving both pendency and quality by eliminating the dead zones is to have each response from the applicant docketed to be picked up for review by the patent examiner within two months of filing. This is critical, especially after an applicant-patent examiner interview. The case should be available for immediate action to finalize any understandings reached during an interview and permit the applicant to prepare and submit any needed amendment/evidence. Currently, a productive interview can be held, an RCE filed and the case then not be taken up for action again by the examiner for months or years. The momentum achieved by way of the productive interview is lost.

### **SUGGESTIONS**

1. First, do no harm. The ongoing investigation should continue and any transgressors should be appropriately disciplined. However, the investigation must keep in mind the systems examiners are working under and reality may significantly differ from the story told by the reviewed records.
2. Change the timekeeping system so that examining time is tracked by individual application numbers and specific examining activities, e.g., searching, reviewing application, drafting office actions etc. To the extent patent examiners are entering examining time without documenting the application that was under review and specific activities performed, the system is rife for abuse. A more complete time record will allow remote supervisors a more accurate glimpse of how a patent examiner is actually spending their time. Such a system will also provide management with a robust data set that can be mined to study and provide feedback as to how effective and efficient a patent examiner is. For example, if a patent examiner's average search time per application is disproportionately more or less than their peers in the same art area, managers could investigate and determine whether that patent examiner is inadvertently or purposely cutting corners on the searching aspect of their job or wasting time by over searching or inefficiently using the search tools. The same considerations apply to how much time patent examiners take to write an office action. Such data would also give managers a real time opportunity to provide corrective training as needed.

3. Reduce the emphasis of counts in determining patent examiner productivity. Management, POPA and stakeholders should work in concert to develop new productivity metrics that emphasize the conclusion of an examination through an efficient and effective, modernized compact prosecution system instead of merely reaching a final rejection. We must work to change the mindset that a successful patent examiner is one that merely makes his/her counts without regard to the quality of the underlying work product. It is simply too easy for patent examiners to rush through incomplete office actions to achieve counts at the end of a bi-week, quarter and/or fiscal year. One metric that should be considered is the number of actions per ultimate disposal, rather than per RCE. Patent examiners should be incentivized to reach the ultimate conclusion of each case by having a continuous conversation with applicant with no dead zones.
4. Modernize compact prosecution by eliminating final rejections, after final practice and the resulting dead zones to allow for a truly compact and efficient examination process. The original version of compact prosecution in too many cases a race to a final rejection and the concomitant RCE instead of a focused proceeding to find patentable subject matter in an efficient and effective manner.
5. Improve teleworking by requiring patent examiners to live within commuting distance of the Alexandria campus or one of the regional offices and require presence in a physical office for a defined number of hours per bi-week. As a successful teleworker I can attest to the importance of maintaining a physical presence in an office. When I telecommuted from South Carolina to the Alexandria headquarters in 2004-05, I found people waiting to see me at my office. In private practice, I travel frequently to my firm's other offices as well to those of clients. Patent examiners need not have a travel schedule but they must be available to applicants for in-person interviews. This will add to the robustness of the new regional offices and make them more useful to applicants.

Further, being in an office will make all examiners available for in-person training, mentoring and collaboration. The in-person exchange of views can be more efficient than a telephone conversation. Patent examiners need to collaborate more to insure that each office action is as complete and meaningful as possible.

6. Teleworking, pendency, and quality will all improve if the PTO allows for increased management involvement on the merits of a case. Long pending cases already are

treated specially and require supervisory input, but this is observed mainly in the breach. By having manager/supervisors become involved on the merits in appropriate cases, an informed discussion can be had by applicant, the patent examiner and a manager/supervisor to put the case on track for an earlier resolution. No one person has a monopoly on good ideas and it is easy for applicant and/or the patent examiner to become entrenched, not understanding the other's position. Appropriate management intervention can provide real time information regarding examiner performance and will allow for additional training as needed. This intervention will also aid applicant in understanding the strength of his or her position and clarify where compromise is needed. This action is especially needed for primary examiners. As discussed above, the work product of a primary examiner is not reviewed to any degree in real time and too often this can cause a needless RCE or appeal. Given the vast changes in law and technology over at least the last decade, it is naïve to think that most primary examiners are up-to-date on either to the extent needed to efficiently bring prosecution to a close.

The world of patent examining is very different and infinitely more complex now than it was when compact prosecution was implemented in the late 1960s-early 1970s. The PTO and POPA should give up on making incremental changes to an anachronistic system. Instead they should take a step back and recognize that a significant overhaul is needed.

## **CONCLUSION**

I sincerely hope that the ongoing investigation will not uncover widespread cheating by patent examiners. To the extent that such cheating is uncovered, the offenders should be subject to appropriate discipline. The Patent Examiner Telework Program is a valuable part of the PTO. However, the current agreement, in essence, has made the program an entitlement, not a right. By having patent examiners located within commuting distance of the Alexandria campus or one of the regional offices, management can suspend the privilege if a patent examiner's performance is not what it should be. Regardless of the outcome of the investigation, the DOC IG should study the examiner count and compact prosecution system as well as how patent examiner time is accounted for. There is much room for improvement in all of these systems that will not only reduce the possibility of cheating in the future but move the patent examination system into the 21<sup>st</sup> century, reducing overall pendency and improving quality.



PTO management and POPA have much invested in maintaining the status quo. Hopefully, this hearing will provide the impetus that PTO management and POPA need to enter into a meaningful conversation with stakeholders, about changing these systems in order to provide a modern efficient and effective patent examination system.